

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 1576 of 2018

Petitioner :- Rajan Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Munna Tiwari, Bipin Kumar Tripathi

Counsel for Respondent :- G.A., Ashvanee Kumar
Srivastav, Vishal Pandey

Hon'ble Ram Manohar Narayan Mishra, J.

1. Counter affidavit filed on behalf of respondent no.2 is taken on record.
2. Heard learned counsel for the petitioner, learned counsel for the respondent nos.2 and 3, learned A.G.A. for the State and perused the record.
3. The instant petition filed under Article 227 of the Constitution of India has been filed by the petitioner against order dated 11.10.2017 passed by learned Additional Sessions Judge, Court No.9, Gorakhpur in Criminal Revision No.21 of 2017 as well as order dated 29.05.2017 passed by learned Chief Judicial Magistrate Ist, Gorakhpur.
4. By impugned order dated 29.05.2017, the Chief Judicial Magistrate Ist, Gorakhpur dismissed the complaint filed by the petitioner under section 203 Cr.P.C. Prior to dismissal of complaint filed under section 203 Cr.P.C., the petitioner had moved an application under section 156(3) Cr.P.C. before learned Magistrate with an allegation that there was enmity of litigation between informant/Rajan Yadav and opposite parties namely Ram Samuj Gupta and Rajendra Gupta. On 30.08.2016 at around 12:30 hours, the informant had gone to Collector Gorakhpur in relation to some work and when he was on way back to his home, the opposite parties accompanied by three unknown persons intercepted him and assaulted him by kicks, fists and sticks. One of the members of opposite party namely Rajendra Gupta tried to press his neck with intention to kill him and Ram Samuj Gupta snatched Rs.10,000/- and one gold chain from the informant.
5. Aforesaid application was treated as complaint by learned Chief Judicial Magistrate vide order dated 21.12.2016. The case was

fixed for recording statement of the informant under section- 200 Cr.P.C.

6. Feeling aggrieved by the order of the learned Chief Judicial Magistrate, whereby the application under section 156(3) Cr.P.C. was treated as complaint, the informant preferred a criminal revision before the Court of Sessions, which was registered as Criminal Revision No.21 of 2017. During pendency of criminal revision, the case was fixed for recording statement of the complainant under section 200 Cr.P.C. before the court below and on account of absence of the complainant/applicant/informant on three consecutive dates, the complaint was dismissed by learned Chief Judicial Magistrate, Gorakhpur under section 203 Cr.P.C. on that date i.e. 29.05.2017. This factual situation was also taken into account by learned Sessions Judge by dismissing the criminal revision vide impugned order dated 11.10.2017.

7. Learned counsel for the petitioner submitted that the absence of the complainant/petitioner before the trial court was deliberate as he was pursuing remedy of criminal revision before the Court of Sessions and he could not appear before the trial court for recording his statement under section 200 Cr.P.C. Learned court below without taking into consideration this fact dismissed the complaint under section 203 Cr.P.C. on account of non-appearance of the complainant. There is merit in the allegations of the complainant/informant as the injury report of the petitioner reveals that his medico legal examination was conducted on 31.08.2016 at 3:45 p.m. in Government Hospital, where three visible injuries and one pain was found. The injuries included contused swelling over left side of head, injuries on just below left eye and there was hemorrhage in the eye and the injured complainant was referred to eye-surgeon for expert opinion.

8. Per contra, learned counsel for the respondent nos.2 and 3 submitted that the petitioner has not challenged the initial order dated 21.12.2016, whereby the application filed under section 156(3) Cr.P.C. by the petitioner was treated as complaint and as such the order was challenged by way of criminal revision filed by the petitioner before the Court of Sessions and during pendency of the said revision, the complaint was dismissed by trial court in absence of complainant on three consecutive dates. There are procedural errors in present petition and same is liable to be dismissed.

9. Learned A.G.A. as well as learned counsel for the respondent nos.2 and 3 also submitted that the order dated 21.12.2016

directing for registration of application under section 156(3) Cr.P.C. as complaint case, is not revisable as the application under section 156(3) Cr.P.C. is not supposed to be dismissed and revision can only lie against final order before Court of Sessions or this Court.

10. The learned Sessions Judge, in its order dated 11.10.2017, has observed that Magistrate has directed to register the application filed under section- 156(3) Cr.P.C. as a complaint case in view of judgement passed in **Ram Babu Gupta vs. State of U.P., 2001 (44) A.L.R. 558** and **Criminal Misc. Petition No.9297 of 2007 "Sukhwasi Lal vs. State of U.P. (D.B.)"**. The learned revisional court has also observed that under section 190 Cr.P.C. the modes of cognizance of offences by Magistrate are enumerated and Magistrate made a cognizance upon receiving a complaint of facts which constitute such evidence or upon a police report of such facts.

11. So far as the legal position is concerned, this Court in many cases has admitted revision filed by the informant against an order passed in complaint under section 156(3) Cr.P.C., wherein the Magistrate has directed registration of application under section 156(3) Cr.P.C. as a complaint case and proceeded under Chapter-XV of Code of Criminal Procedure thereon. Therefore, it cannot be generalized that revision is not maintainable against the orders of Magistrate treating an application under section 156(3) Cr.P.C. as a complaint case. This will depend on facts and circumstances of the particular case, otherwise grave miscarriage of justice is liable to be issue in a particular case. Even Hon'ble Apex Court has held that in heinous offences the informant cannot be saddled with burden of adducing evidence under sections 200/202 Cr.P.C. for making a prayer before the Court or initiate an action against the potential accused and there are cases in which only police investigation is desirable to unfold all the relevant facts involved in the case.

12. However, on facts of the case, I find no illegality, irregularity or perversity in the impugned order passed by revisional court dated 11.10.2017 and so far the revision preferred against the order dated 21.12.2016 passed by learned Magistrate treating the application under section 156(3) Cr.P.C. as complaint, has been dismissed and said order has been affirmed. However, so far the dismissal of complaint under section 203 Cr.P.C. by the learned Magistrate vide order dated 29.05.2017 is concerned, the said order cannot be permitted to stand as the same has been passed during pendency of revision before the Court of Sessions, wherein

the order of learned Chief Judicial Magistrate treating the application under section 156(3) Cr.P.C. filed by the petitioner as complaint was under challenge. Therefore, there is force in contention of learned counsel for the petitioner that the absence of the complainant/applicant before the court below for recording his statement under section 200 Cr.P.C. was not deliberate as he was at that time pursuing remedy of revision before the Court of Sessions, feeling aggrieved by the order dated 21.12.2016 passed by learned court below.

13. Section 203 Cr.P.C. provides as under:-

"203. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

14. From bare perusal of the section 203 Cr.P.C., it appears that a complaint can only be dismissed when Magistrate is of opinion that there is no sufficient ground for proceeding against the accused after considering the statements on oath, if any, of the complainant and of the witnesses and the result of inquiry or investigation (if any) under section 202 Cr.P.C. and shall dismiss the complaint on account of non-compliance of the complainant on three consecutive dates. The order dated 29.05.2017 passed by learned Magistrate is not sustainable and same is liable to be dismissed.

15. The petition is **partly allowed**. The impugned order passed by learned revisional court is affirmed, in so far as it dismissed revision in regard to order dated 21.12.2016 passed by learned Magistrate, whereby the application under section 156(3) Cr.P.C. has been treated as complaint. The order dated 29.05.2017 passed by Magistrate by which complaint has been dismissed by court below is whereby set-aside.

16. The matter is remanded to court concerned by which the order dated 29.05.2017 was passed to proceed with the case at the stage of recording statement under section 200 Cr.P.C. by the complainant and the petitioner is directed to appear before the court concerned for recording his statement under section 200 Cr.P.C. and he expected to co-operate in the proceedings of the court below.

Order Date :- 16.11.2023/Saif